

FIRST REGULAR SESSION

SENATE BILL NO. 272

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR DePASCO.

Read 1st time January 10, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0221S.011

AN ACT

To repeal sections 303.026, 303.190 and 379.203, RSMo 2000, relating to operator policies of liability insurance, and to enact in lieu thereof four new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 303.026, 303.190 and 379.203, RSMo 2000, are repealed and four new sections enacted in lieu thereof, to be known as sections 303.026, 303.190, 303.192 and 379.203, to read as follows:

303.026. 1. The director shall inform each owner who registers a motor vehicle of the following:

(1) The existence of the requirement that every motor vehicle owner in the state must maintain his financial responsibility;

(2) The requirement that every motor vehicle owner show an insurance identification card, or a copy thereof, or other proof of financial responsibility at the time of vehicle registration; this notice shall be given at least thirty days prior to the month for renewal and shall be shown in bold, colored print;

(3) The penalties which apply to violations of the requirement to maintain financial responsibility;

(4) The benefits of maintaining coverages in excess of those which are required;

(5) The director's authority to conduct samples of Missouri motor vehicle owners to ensure compliance.

2. No motor vehicle owner shall be issued registration for a vehicle unless the owner, or his

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

authorized agent, signs an affidavit provided by the director of revenue at the time of registration of the vehicle certifying that such owner has and will maintain, during the period of registration, financial responsibility with respect to each motor vehicle that is owned, licensed or operated on the streets or highways. The affidavit need not be notarized, but it shall be acknowledged by the person processing the form. The affidavit shall state clearly and in bold print the following: "Any false affidavit is a crime under section 575.050 of Missouri law.". In addition, every motor vehicle owner shall show proof of such financial responsibility by presenting his or her insurance identification card, as described in section 303.024, or a copy thereof, or some other proof of financial responsibility in the form prescribed by the director of revenue at the time of registration unless such owner registers his vehicle in conjunction with a reciprocity agreement entered into by the Missouri highway reciprocity commission pursuant to sections 301.271 to 301.279, RSMo, or unless the owner insures the vehicle according to the requirements of the division of motor carrier and railroad safety pursuant to section 390.126, RSMo. **A person who qualifies for an operator's policy of liability insurance pursuant to section 303.190 and section 303.192 may file evidence of that insurance as proof of financial responsibility.**

3. To ensure compliance with this chapter, the director may utilize a variety of sampling techniques including but not limited to random samples of registrations subject to this section, uniform traffic tickets, insurance information provided to the director at the time of motor vehicle registration, and persons who during the preceding year have received a disposition of court-ordered supervision or suspension. The director may verify the financial responsibility of any person sampled or reported.

(1) Beginning January 1, 2001, the director may require such information, as in his or her discretion is necessary to enforce the requirements of subdivision (1) of subsection 1 of this section, to be submitted from the person's insurer or insurance company. When requested by the director of revenue, all licensed insurance companies in this state which sell private passenger (noncommercial) motor vehicle insurance policies shall report information regarding the issuance, nonrenewal and cancellation of such policies to the director, excluding policies issued to owners of fleet or rental vehicles or issued on vehicles that are insured pursuant to a commercial line policy. Such information shall be reported electronically in a format as prescribed by the director of the department of revenue by rule except that such rule shall provide for an exemption from electronic reporting for insurers with a statistically insignificant number of policies in force.

(2) The director may require the data described in subsection 2 of section 303.412 to be reported by insurance companies and require reporting periods of at least once per month. When required by the director of revenue, each insurance company shall provide to the department a record of each policy issued, canceled, terminated or revoked during the period since the previous report. Nothing in this section shall prohibit insurance companies from reporting more frequently than once per month.

(3) The director may use reports described in subdivision (1) of this subsection for sampling purposes as provided in this section.

4. Information provided to the department by an insurance company for use in accordance with this section is the property of the insurer and is not subject to disclosure pursuant to chapter 610, RSMo. Such information may be utilized by the department for enforcement of this chapter but may not be disclosed except that the department shall disclose whether an individual is maintaining the required insurance coverage upon request of the following individuals and agencies only:

- (1) The individual;
- (2) The parent or legal guardian of an individual if the individual is an unemancipated minor;
- (3) The legal guardian of the individual if the individual is legally incapacitated;
- (4) Any person who has power of attorney from the individual;
- (5) Any person who submits a notarized release from the individual that is dated no more than ninety days before the request is made;
- (6) Any person claiming loss or injury in a motor vehicle accident in which the individual is involved;
- (7) The office of the state auditor, for the purpose of conducting any audit authorized by law.

5. The director, after consultation with the working group as provided for in section 303.406, may adopt any rules and regulations necessary to carry out the provisions of subdivisions (1) through (3) of subsection 3 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

6. Any person or agency who knowingly discloses information received from insurance companies pursuant to this section for any purpose, or to a person, other than those authorized in this section is guilty of a class A misdemeanor. No insurer shall be liable to any person for performing its duties pursuant to this section unless and to the extent the insurer commits a willful and wanton act of omission.

7. The department of revenue shall notify the department of insurance of any insurer who violates any provisions of this section. The department of insurance may, against any insurer who knowingly fails to comply with this section, assess an administrative penalty up to five hundred

dollars per day of noncompliance. The department of insurance may excuse the administrative penalty if an assessed insurer provides acceptable proof that such insurer's noncompliance was inadvertent, accidental or the result of excusable neglect. The penalty provisions of this section shall become effective six months after the rule issued pursuant to subsections 3 and 5 of this section is published in the code of state regulations.

8. To verify that financial responsibility is being maintained, the director shall notify the owner or operator of the need to provide, within fifteen days, proof of the existence of the required financial responsibility. The request shall require the owner or the operator to state whether or not the motor vehicle was insured on the verification date stated in the director's request. The request may include but not be limited to a statement of the names and addresses of insurers, policy numbers and expiration date of insurance coverage. Failure to provide such information shall result in the suspension of the registration of the owner's motor vehicle, and where applicable, the owner's or the operator's driving privilege, for failing to meet such requirements, as is provided in this chapter.

303.190. 1. A "motor vehicle liability policy" as said term is used in this chapter shall mean an owner's or an operator's policy of liability insurance, certified as provided in section 303.170 or section 303.180 as proof of financial responsibility, and issued, except as otherwise provided in section 303.180 by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

2. Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits, exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident; and

(3) May exclude coverage against loss from liability imposed by law for damages arising out of the use of such motor vehicles by a member of the named insured's household who is a specifically excluded driver in the policy.

3. **[Such] An** operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him or her by law for damages arising out of the use by him or her of any motor vehicle **[not owned by him or her,]** within the said

territorial limits and subject to the same limits of liability as are set forth above with respect to any owner's policy of liability insurance **and meet the requirements of section 303.192.**

4. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

5. Such motor vehicle liability policy need not insure any liability pursuant to any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

6. Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his or her behalf and no violation of said policy shall defeat or void said policy;

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection 2 of this section;

(4) The policy, the written application thereof, if any, and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

7. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

8. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make

under the terms of the policy except for the provisions of this chapter.

9. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

10. The requirements of a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

11. Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirement for such a policy.

303.192. 1. Except as otherwise provided in subsection 6 of this section, any natural person may satisfy the requirements of section 303.190 by obtaining, in lieu of an owner's policy of liability insurance, an operator's policy of liability insurance which meets the requirements of this section and section 303.190.

2. An operator's policy of liability insurance must state, in addition to the requirements of section 303.190, that:

(1) The insurer is only liable under the policy for liability incurred by the insured while the named insured is the operator of a motor vehicle or while a motor vehicle owned by the insured is not being operated by any person;

(2) The policy does not provide coverage for any vicarious liability imposed on the owner of the motor vehicle as a result of the operation by another person of a motor vehicle owned by the insured that is insured under an operator's policy of liability insurance;

(3) The coverage provided by the policy may not meet the requirements of the mandatory motor vehicle insurance or financial responsibility laws of other states, unless such extended coverage is expressly included in the policy; and

(4) No operator's policy of liability insurance may be delivered or issued for delivery in this state unless the insured has signed an endorsement stating that he has read and understood the policy and its limitations.

3. An owner of a motor vehicle which is registered or required to be registered in this state and who holds an operator's policy of liability insurance shall not permit another person to operate his motor vehicle if the owner knows or should have known that the person does not have liability insurance to cover his own operation of that motor vehicle. If a motor vehicle insured under an operator's policy of liability insurance is driven by a person who does not have in effect a complying policy as required by section 303.190, and such person is involved in an accident, the owner of such motor vehicle and such driver shall be liable for any liability or damages arising out of such person's use of such motor vehicle.

4. An operator's policy of liability insurance must not provide coverage for damages incurred while a person other than the named insured is operating a motor

vehicle.

5. An operator's policy of liability insurance must provide coverage for liability incurred by the insured while a motor vehicle owned by the insured is not being operated by any person.

6. This section does not apply to a lessor, dealer, manufacturer, rebuilder or distributor of a motor vehicle, an owner of a fleet, a common, contract or private motor carrier or any other employer who owns a motor vehicle for use in his business.

379.203. 1. No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, or in the case of any commercial motor vehicle, as defined in section 301.010, RSMo, any employer having a fleet of five or more passenger vehicles, such coverage is offered therein or supplemental thereto, in not less than the limits for bodily injury or death set forth in section 303.030, RSMo, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. Such legal entitlement exists although the identity of the owner or operator of the motor vehicle cannot be established because such owner or operator and the motor vehicle departed the scene of the occurrence occasioning such bodily injury, sickness or disease, including death, before identification. It also exists whether or not physical contact was made between the uninsured motor vehicle and the insured or the insured's motor vehicle. Provisions affording such insurance protection against uninsured motorists issued in this state prior to October 13, 1967, shall, when afforded by any authorized insurer, be deemed, subject to the limits prescribed in this section, to satisfy the requirements of this section.

2. For the purpose of this coverage, the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified herein because of insolvency. **An "uninsured motor vehicle" shall also mean a motor vehicle used with the permission of its owner who has an operator's policy of liability insurance as provided by section 303.192, RSMo, which does not provide coverage for the operation of the motor vehicle by a person other than the owner if there is no liability insurance for bodily injury or bond applicable to the operator.**

3. An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within two years after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection

under terms and conditions more favorable to its insureds than is provided hereunder.

4. In the event of payment to any person under the coverage required by this section, and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, with respect to payments made by reason of the coverage described in subsections 2 and 3 above, the insurer making such payment shall not be entitled to any right of recovery against such tort-feasor in excess of the proceeds recovered from the assets of the insolvent insurer of said tort-feasor.

5. In any action on a policy of automobile liability insurance coverage providing for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles, the fact that the owner or operator of such uninsured motor vehicle whether known or unknown failed to file the report required by section 303.040, RSMo, shall be prima facie evidence of uninsured status, and such failure to file may be established by a statement of the absence of such a report on file with the office of the director of revenue, certified by the director, which statement shall be received in evidence in any of the courts of this state. In any such action, the report required by section 303.040, RSMo, when filed by the owner or operator of an uninsured motor vehicle, shall be prima facie evidence of lack of insurance coverage and the report, or a copy thereof, certified by the director of revenue, may be introduced into evidence in accordance with section 303.310, RSMo.

T

Copy